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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,356	10/14/2003	Shaun P. Cooley	20423-08165	6704

34415 7590 05/01/2008

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EXAMINER	
KIM, TAE K	

ART UNIT	PAPER NUMBER
2153	

NOTIFICATION DATE	DELIVERY MODE
05/01/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/686,356	COOLEY, SHAUN P.	
	Examiner	Art Unit	
	TAE K. KIM	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *14 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *01/30/04; 03/26/04; 04/02/04; 03/04/05; 04/15/05; 06/30/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This is in response to the application filed on October 14, 2003 where Claims 1 – 20, of which Claims 1, 16 , and 18 are in independent form, are presented for examination.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on January 30, 2004, March 26, 2004, April 2, 2004, March 4, 2005, April 15, 2005, and June 30, 2006 were filed after the mailing date of the U.S. Application on October 14, 2003. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5, 12 – 16, and 18 – 20 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Appl. 2004/0221062, filed by Bryan T. Starbuck et al. (hereinafter "Starbuck").

1. Regarding Claims 1, 16, and 18, Starbuck discloses a method for countering spam that disguises characters within an electronic message (Para. 0009), said method comprising the steps of:

locating portions of the electronic message where the difference between foreground color and background color is negligible (Figs. 4A and 4B; Para. 0032 and 0038; factors such as size, color, font, formatting, and inclusion of the text inside of a link may change the weight of the word in the filter, thus character, word, and/or text segmentation may be performed based upon features of the character or groups of characters, such as color or visibility, to determine that weight; for example, if a word or character is white or very light grey text on a white background, the word or character is essentially invisible and that portion is removed from the message prior to filtering);

deleting from the electronic message foreground characters from said portions, to form a redacted electronic message (Para. 0038; invisible or nearly invisible words and characters should be removed forming a modified text-only formatted message); and

forwarding the redacted electronic message to a spam filter (Fig. 3, items 306, 308).

2. Regarding Claim 2, Starbuck discloses all the limitations of Claim 1 above. Starbuck further discloses of setting a negligibility threshold such that, when the difference between foreground color and background color is negligible for a certain portion of the electronic message (Para. 0032; if a word or character is rendered as white or very light grey text on a white background, the word or character is essentially

invisible), said portion is invisible or nearly invisible to a typical human viewer of the electronic message (Para. 0033; if these words are included white-on-white color, the words may make the message less spam-like according to filters and users would not see them at all).

3. Regarding Claim 5, Starbuck discloses all the limitations of Claim 1 above. Starbuck further discloses of determining when at least one of the foreground color and the background color is a gray-scale color (Para. 0032; examining size, color, font, and formatting of various words, such as if a word or character is rendered as white or very light grey text on a white background, the word or character is essentially invisible).

4. Regarding Claims 12, 15, and 20, Starbuck discloses all the limitations of Claims 1 and 18 above. Starbuck further discloses that the electronic message comprises e-mail (Para. 0009), and the locating step comprises using a HTML parser (Para. 0009; HTML rendering engine to strip the HTML instruction for all non-substantive aspects of the message).

5. Regarding Claims 13 and 19, Starbuck discloses all the limitations of Claims 1 and 18 above. Starbuck further discloses that the locating step comprises using a color comparison module (Para. 0032; system examines the color of the various words in comparison to the background).

6. Regarding Claim 14, Starbuck discloses all the limitations of Claim 1 above. Starbuck further discloses that the spam filter is responsive to characters within the electronic message (Para. 0032 and 0038; invisible or nearly invisible words and characters should be removed so the spam filter will not be confused by their presence).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3, 4, 6 – 11, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starbuck, in view of U.S. Appl. 2002/0113801, filed by Maire Reavy et al. (hereinafter "Reavy").

7. Regarding Claims 3, 6, and 17, Starbuck discloses all the limitations of Claims 1 and 5 above. Starbuck, however, does not specifically disclose that the locating step comprises of comparing hue, saturation, and brightness of the foreground and background colors.

Reavy discloses that the foreground and background must be evaluated, including the color hue, saturation, and brightness, to determine the legibility of the text to a user on a display (Para. 0010). It would have been obvious to one skilled in the art at the time of the invention to evaluate the hue, saturation, and brightness of the foreground and background to determine the visibility of text within an electronic message. The electronic message would be viewed by a user on a display terminal and the legibility would be determined by the hue, saturation, and brightness comparisons between the foreground and background. This would allow the determination of whether or not the text within the electronic message is visible to the user.

8. Regarding Claim 4, Starbuck, in view of Reavy, discloses all the limitations of

Claim 3 above. Reavy further discloses that the comparer program extracts the red, green and blue components of the background and foreground and then calculates the luminance, hue and saturation of the background and foreground (Fig. 1, items 104 and 106; Para. 0036 and 0037).

9. Regarding Claims 7 and 8, Starbuck, in view of Reavy, discloses all the limitations of Claim 6 above. Reavy further discloses of calculating the difference in brightness (luminance), saturation, and hue between the foreground and background (Fig. 1, item 108; Para. 0037 and 0038). Neither Starbuck nor Reavy specifically disclose of determining whether or not the differences in brightness, saturation, or hue between the foreground and background are negligible based on certain percentages.

Examiner takes Official Notice (see MPEP § 2144.03) that *"the negligibility of an electronic message can be determined if there are small percentage differences in the brightness, saturation, and hue of the foreground to the background"* in a computer networking environment was well known in the art at the time the invention was made. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, In re Boon, 169 USPQ 231, 234 states "as we held in Ahlert, an applicant must be given the opportunity to challenge either the correctness of

the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

Furthermore, the percentage differences in saturation, brightness, and hue to determine whether or not the text is negligible can vary depending on the designer's preferences. To determine if the difference between the foreground and background color is negligible when: a) the difference in saturation between foreground and background is less than 5% and the difference in brightness between foreground and background is less than 4%, or b) the difference in saturation between foreground and background is less than 3% and the difference in brightness between foreground and background is less than 2%, would have been a designer's choice in implementing the system taught by Starbuck, in view of Reavy.

10. Regarding Claim 9, Starbuck discloses all the limitations of Claim 1 above. Starbuck, however, does not specifically disclose that neither the foreground color nor the background color is a gray-scale color, and the locating step comprises comparing hue, saturation, and brightness of the foreground and background colors.

Reavy discloses that the comparer program extracts the red, green and blue components of the background and foreground and then calculates the luminance, hue and saturation of the background and foreground (Fig. 1, items 104 and 106; Para. 0036 and 0037). It would have been obvious to one skilled in the art at the time of the

invention to evaluate the hue, saturation, and brightness of the foreground and background to determine the visibility of text within an electronic message. The electronic message would be viewed by a user on a display terminal and the legibility would be determined by the hue, saturation, and brightness comparisons between the foreground and background. This would allow the determination of whether or not the text within the electronic message is visible to the user.

11. Regarding Claims 10 and 11, Starbuck, in view of Reavy, discloses all the limitations of Claim 9 above. Reavy further discloses of calculating the difference in brightness (luminance), saturation, and hue between the foreground and background (Fig. 1, item 108; Para. 0037 and 0038). Neither Starbuck nor Reavy specifically disclose of determining whether or not the differences in brightness, saturation, or hue between the foreground and background are negligible based on certain degrees or percentages.

Examiner takes Official Notice (see MPEP § 2144.03) that *"the negligibility of an electronic message can be determined if there are small percentage or degrees of differences in the brightness, saturation, and hue of the foreground to the background"* in a computer networking environment was well known in the art at the time the invention was made.

Furthermore, the percentage or degrees of differences in saturation, brightness, and hue to determine whether or not the text is negligible can vary depending on the designer's preferences. To determine if the difference between the foreground and background color is negligible when: a) the difference in hue between foreground and

background is less than 6 degrees and the combined difference between the saturation and brightness values of the foreground and background is less than 14%, or b) when the difference in hue between foreground and background is less than 4 degrees and the combined difference in saturation and brightness values of the foreground and background is less than 12%, would have been a designer's choice in implementing the system taught by Starbuck, in view of Reavy.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 4,770,534 - color comparison method evaluating the differences in hue, brightness, and saturation of two different colors; U.S. Patent 6,148,102 – recognizing text in a multicolor image.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae K. Kim, whose telephone number is (571) 270-1979. The examiner can normally be reached on Monday - Friday (8:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton B. Burgess, can be reached on (571) 272-3949. The fax phone number for submitting all Official communications is (703) 872-9306. The fax phone number for submitting informal communications such as drafts, proposed amendments, etc., may be faxed directly to the examiner at (571) 270-2979.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/Tae K. Kim/

/Glenton B. Burgess/
Supervisory Patent Examiner, Art Unit 2153